IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2007

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THE HONOURABLE MR. JUSTICE K.MOHAN RAM

Criminal Original Petition No.34202 of 2007

V.S.Veerasamy ... Petitioner

-Vs-

State by Inspector of Police
B-7 Ramanathapuram Police Station
Coimbatore City, Coimbatore - 45 ... Respondent

Prayer:- Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to direct the respondent herein to register the case as per the orders of the learned Judicial Magistrate No.VI, Coimbatore, by its order dated 26.06.2007 in D.No.1042 of 2007 and investigate the matter and file final report within the time stipulated by this Court.

For Petitioner : Mr. V.Balu
For Respondent : Mr. A.Saravanan,
Government Advocate (Crl. Side)

O R D E R

The brief facts that are necessary for the disposal of the above criminal original petition are as follows:-

The petitioner herein filed a private complaint before the learned Judicial Magistrate No.VI, Coimbatore, against one Lakshmi and nine others alleging the fabrication of false records etc., which according to the petitioner amounted to offence under Sections 120(b), 465, 468, 471, 511, 423, 424, 441 and 447 of the Indian Penal Code. The learned Magistrate by his proceedings in D.No.1042 of 2007 dated 26.06.2007 forwarded the said private complaint under Section 156(3) of the Criminal Procedure Code to the respondent herein for registering a case and investigating and for filing a report within a period of one month. On receipt of the said proceedings the respondent herein instead of registering a case and taking up investigation had conducted a preliminary enquiry and has sent a report concluding that the complaint discloses only a civil dispute and further action can be taken only after the disposal of the civil suits pending between the parties. Being aggrieved by that the petitioner has filed the above criminal original petition seeking a direction to the respondent to register the case as per the orders of the learned Magistrate.

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2. Heard Mr. V.Balu learned counsel for the petitioner and Mr.A.Saravanan learned Government Advocate (Crl. Side) for the respondent.

3. Learned counsel for the petitioner submitted that when the learned Magistrate by his proceedings has directed the respondent to register the case and investigate, it is the mandatory duty on the part of the respondent to first register the case and then investigate the same and thereafter file a final report either way. But instead of registering a case the respondent had conducted only a preliminary enquiry and has sent the report, which according to the learned counsel, is against the provisions contained in Sections 156(3) and 157 of the Criminal Procedure Code.

4. Countering the said submissions the learned Government Advocate (Crl. Side) for the respondent fairly submitted that the respondent, on the directions issued by the learned Magistrate under Section 156(3) of the Criminal Procedure Code, ought to have registered the case first and investigated the same and the procedure followed by the Sub Inspector of Police in this case is not in accordance with the provisions of the Criminal Procedure Code.

5. I have carefully considered the submissions made by the learned counsel on either side. It is seen that on the private complaint filed by the petitioner herein the learned Magistrate, as aforesaid, had forwarded the complaint to the respondent herein with the direction to register a case and investigate the same and file a final report within one month, but admittedly the respondent had not registered the case. Sections 156 (1) and 156 (3) of the Criminal Procedure Code read as follows:-

> "156. Police Officer's power to investigate cognizable case. (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
> (2) ....
> (3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned."

6. A reading of the above said provisions makes it abundantly clear that the learned Magistrate is empowered to order investigation on a private complaint filed before him. The Magistrate can under Section 190 of the Criminal Procedure Code before taking cognizance seek for investigation by the Police under Section 156(3) of the Criminal Procedure Code. The order made under Section 156(3) of the Criminal Procedure is in the nature of a peremptory reminder or intimation to the Police to exercise their plenary powers of investigation under Section 156(1) of the Criminal Procedure Code. Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173 of the Criminal Procedure Code. When the learned Magistrate has applied his mind and ordered registration of a case and investigation thereon with a

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further direction to file final report within one month, it is mandatory on the part of the respondent to have first register a case. Admittedly, in this case, the respondent has not complied with the directions of the learned Magistrate and registered the case. Investigation in a criminal case commences only after registration of a first information report, instead of registering the case the respondent has conducted a preliminary enquiry which is not in consonance with the order passed by the learned Magistrate. The report submitted by the respondent after conducting a preliminary enquiry is also cannot be considered to be a report filed under Section 173 of the Criminal Procedure Code. Therefore the entire action taken by the respondent is contrary to the provisions contained in Sections 156 and 157 of the Criminal Procedure Code. Therefore, the report submitted by the respondent herein should be considered to be non-est in law.

7. For the above said reasons the criminal original petition is disposed with the following directions:-

> The respondent shall first register the case and then commence investigation, examine the witnesses and thereafter,depending upon whether a case is made out or not, a final report has to be filed accordingly within a period of one (1) month from the date of receipt of a copy of this order.

srk

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1. The Inspector of Police, B-7 Ramanathapuram Police Station
Coimbatore City, Coimbatore - 45

2. The Judicial Magistrate No.IV, Coimbatore

3. The Public Prosecutor, High Court, Madras.

+1 cc to Mr.V.Balu, Advocate Sr.No.72161.

SJ(CO)
DCP/4.1

Crl.O.P.No.34202 of 2007

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